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No. 83-1242

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SUN MYUNG MOON and TAKERU KAMIYAMA,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE SPARTACIST LEAGUE AS *AMICUS CURIAE*

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QUESTIONS PRESENTED

1. Did the court below deny First Amendment protection to a religious organization when it affirmed a method of prosecution which abrogated the internal integrity of the organization's decisions of the core concerns of structure, contributions and expenditures?

2. Did the court below deny an unpopular religious organization the legal protections afforded other organizations in violation of the First Amendment and due process?

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SUMMARY OF ARGUMENT

The court of appeals affirmed a prosecutorial method which sanctions the denial of First Amendment protection to the acknowledged spiritual and organizational leader of a religious organization. The court licensed the abrogation of organizational integrity concerning the core questions of structure, expenditures and contributions. In so doing, legal precedent, practice and constitutional protections were ignored.

The method of the prosecution treated the despised Moon organization and its leader differently than other organizations and violated established constitutional protections for those religious, political and other organizations viewed as unpopular and

expressing minority opinions. The method and process of this conviction has dangerous consequences for any organization which the government choses to single out for harassment and victimization.

BRIEF OF THE SPARTACIST LEAGUE AS AMICUS CURIAE

Pursuant to Rule 36.1 of the Rules of this Court, the organization named above files this brief in support of the instant petition for certiorari. Consent for filing of this brief has been obtained in writing from the attorneys of record for the parties in this case. Their original letters have been filed with the Clerk of this Court.

INTEREST OF AMICUS CURIAE

The Spartacist League is a Marxist political organization with a history of twenty years of activity in the United States, including running candidates for public office. The Spartacist League is an unincorporated association which

receives financial support from members and other political supporters.

The Spartacist League does not hold the Unification Church to be a religious entity. It is the position of the Spartacist League that this question belongs to the domain of public debate and is in no way a matter for governmental or juridical determination. However neither the trial court nor the court of appeals disputed the characterization of the Unification Church as a religious organization nor Sun Myung Moon's asserted position with the Unification Church as its spiritual and organizational leader. Rather, the posture of this case is that the First Amendment implications of this prosecution were acknowledged - and then denied application.

It is the withholding of First

Amendment protection from Moon in denying him the right to explain the religious reasons for and the religious meaning of his conduct, thereby abrogating a religious organization's determination of its structure, contributions and expenditures which compels the filing of this brief amicus curiae.

The Spartacist League has no agreement with or support for the policies or activities of the Unification Church. But the method by which Moon's prosecution was conducted and the principles upholding his conviction have broad First Amendment consequences - extending from the right to religious worship to political advocacy. The autonomy of religious organizations is linked historically to the development of the legal status of all associations. And First Amendment protection of

religious organizations is analagous to and impacts heavily on other organizations protected by the constitution. Thus the method and principles underlying Moon's conviction, if left unchallenged, have potentially unlimited reach, jeopardizing the associational rights of those engaged in religious, social or political advocacy.

STATEMENT OF CASE

Amicus adopts the statement of the case as set forth in the petition for certiorari to the extent relevant to the argument below.

The undisputed central question of this criminal prosecution was whether the ownership of funds in a Chase bank account and certain stock rested with Sun Myung Moon or the Unification Church. The

man accused by the government of ownership of those assets, and therefore of having concealed taxable income, was acknowledged as the spiritual and organizational leader of the Unification Church, the status of which as a religious organization was not challenged. Nor was it disputed that the funds Moon received were from Unification Church followers, intending their contributions to be donations for church purposes.

Yet, court of appeals sanctioned a prosecution which denied a religious organization and its leader the protections of the First Amendment. The organizational decisions of the church were abrogated by denying Moon the right to explain the religious reasons and purposes of his actions. And the much despised Unification Church was denied

the benefits of established law, practice and precedent accorded other, more established religions.

REASONS FOR GRANTING THE WRIT

I.THE METHOD OF THIS PROSECUTION ABROGATED THE INTERNAL INTEGRITY OF A RELIGIOUS ORGANIZATION IN VIOLATION OF THE FIRST AMENDMENT

The critical and central issue of this criminal prosecution was whether Moon owned the assets in question and therefore was required to pay income tax on the bank interest and the value of the stock, or Moon held these assets merely beneficially or as a trustee for the Unification Church.

This prosecution clearly invoked First Amendment considerations. The

court of appeals noted the "myriad of constitutional problems presented" and the "troubling issues of religious persecution and abridgement of free speech." Moreover, this case did not present new issues, but was prosecuted in the context of established constitutional principles and legal precedents regarding religious autonomy, government intervention, control of religious groups and taxation.

But in affirming the method which secured Moon's conviction, the court of appeals denied First Amendment protection as irrelevant and inapplicable, specifically because this case was a federal criminal tax prosecution. A process which denies the applicability of the First Amendment Religion Clauses in a criminal prosecution and vitiates the undisputed internal decisions of an

organization, when those decisions concern the core of organizational existence, is a violation of both the First Amendment and due process.

The fundamental concern of the Religious Clauses of the First Amendment is the relationship between religious expression and the state. The underlying historical perception is that a union between church and state leads to persecution and civil strife, Everson v. Board of Education, 330 U.S. 1 (1947), and "tends to destoy government and degrade religion," Engel v. Vitale, 370 U.S. 421, 431 (1962). The power of the state is no greater than in a criminal prosecution wherein religious practices can be rendered unlawful, its adherents can be jailed. Contrary to the opinion of the court of appeals, in criminal matters, no less than civil, the First

Amendment prohibits either the courts or government from trying the truth or falsity of religious beliefs. United States v. Ballard, 322 U.S. 78 (1944). It was not constitutionally permissible for the jury to be given license by the courts below to substitute themselves for the Unification Church regarding religious determinations of structure, contributions and expenditures of the church. "When the triers of fact undertake that task, they enter a forbidden domain." Id. at 87.

If the issues posed had been in the context of an intra-church dispute, there would have been no quarrel from the courts below that religious autonomy and court abstention from the Unification Church's internal decision making process was constitutionally mandated. See, Watson v. Jones, 80 U.S. (13 Wall.) 679

(1871), Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969). Where there are disputes over religious doctrine, administration, or organization, the courts have no authority but must accept the decisions of church bodies "as it finds them," Serbian Orthodox Diocese, 426 U.S. at 713. There is no constitutionally permissible authority for government intrusion into "questions. . . at the core of ecclesiastical concern," defined as including matters of religious doctrine, organization and discipline. Id. at 717. The undisputed decisions of a church and its membership should be entitled to more, not less, protection from government intervention than those marked with internal dissention.

The First Amendment right of political association, considered "one of the foundations of our society," N.A.A.C.P. v. Claiborne Hardware Co., 102 S.Ct 3409 (1982), provides additional authority for protecting organizational integrity from government intervention. This Court has repeatedly recognized the close nexus between freedom of association and freedom of speech. N.A.A.C.P. v. Claiborne, supra., Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981). And "any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957)]. "A state may not constitutionally substitute its own judgment for that of a party," even where the government or court "view a

particular expression as unwise or irrational." Democratic Party v. Wisconsin, supra. at 124.

Thus the powerful authority of constitutional principles regarding religious organizations required the court of appeals to reject the abrogation of church policy and assault on organizational integrity which formed the basis of Moon prosecution. Instead, the court of appeals sanctioned a process which attacked the core of organizational existence, violating both the First Amendment and due process. Moon's relationship to the Unification Church was denied legal import, religious reasons for his actions were deemed irrelevant, the validity of an unincorporated organizational status was challenged, and an unprecedented theory of taxation was applied to funds placed

in trust in Moon's name.

Organizational form and finances, both contributions and expenditures, are the core of an organization's ability to exist and give expression to its beliefs and policy. By not accepting the religious explanations and internally undisputed determinations of the Unification Church in matters of structure, expenditures and finances, principles of neutrality and non-intervention into decisions of a church body were violated, Jones v. Wolf, 443 U.S. 595 (1979); and constituted an impermissible "governmental evaluation" of religious practices and entanglement of government in "classifications of what is or is not religious," Walz v. Tax Commission, 397 U.S. 664, 674 (1970).

The unincorporated status of the

international Unification Church was claimed by the government, with subsequent approval by the court of appeals, as proof of non-existence. This impugns the legality of centuries of unincorporated associational gathering for religious, social, educational and political purposes and vitiates the constitutional principle that religious bodies have the "power to decide for themselves, free from state interference, matters of church government." Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952).

Nor can a religious organization be denied the ability to expend its assets to secure additional financial support nor precluded from determining which expenditures have a religious purpose and which do not. "This is exactly the inquiry that the First Amendment

prohibits. . ." Serbian Eastern Orthodox Diocese v. Milivojevich, supra. at 713.

The court of appeals not only found no error in the trial court's jury instructions on the issue of whether Moon held the assets as a religious trust, but denied that the trust instruction was even necessary. It was conceded by the government and substantiated by the evidence that the source of the funds was "evangelical activities" by Unification Church members, donated and intended for religious purposes. Yet the trial court denied instructions which would provide the jury with the religious meaning and purposes of the acts and practices upon which the government premised its prosecution. Thus Moon, the acknowledged international spiritual and organizational leader of the Unification Church, was convicted of tax fraud

because funds were held in his own name, some assets applied to uses determined by the court to be "business" or "personal" uses, and monies received without specific "in trust" declarations. The jury was given license, if not a court mandate, to impose its own standards of legtimate religious conduct and policy on Moon and the Unification Church.

The denial of religious trust status to Moon's holdings is contrary to legal precedent, including IRS regulations. A contribution for religious purposes occurs whenever it is "for the use of" that charitable purpose regardless of the actual identity of the recipient. Winn v. Commissioner, 595 F.2d 1060, 1065 (5th Cir. 1979); Brittingham v. Commissioner, 57 T.C.91, 100-01 (1971), acq. 1971-2 C.B.2. Moreover, the process and determination that the entirety of

the assets held in Moon's name belonged to him personally constitutes a seizure of assets from the organizational members who placed them with Moon for application to the purposes and policies of their church as decided by that church. Cf. Jones v. Wolf, supra. at 606.

II. DENYING UNPOPULAR ORGANIZATIONS THE LEGAL PROTECTIONS AFFORDED OTHER ORGANIZATIONS VIOLATES THE FIRST AMENDMENT AND DUE PROCESS

The method of this prosecution was a backdoor assault on a virulently disliked organization rendering various norms of organizational existence and functioning illegal or suspect. The prosecution did not directly challenge the principles and legal precedents which apply in general to government control of, intervention into, or taxation of religious organizations. Instead, Terrett v.

Taylor, 13 U.S. (9 Cranch) 43 (1815), (holding church property legally free from government interference); Walz v. Tax Commission, supra., (holding tax exemptions for religious groups not violative of First Amendment); and Jones v. Wolf, supra. (prohibiting the resolution of intra-church disputes by civil courts interpreting religious doctrine) were denied legal relevance. Moon, the acknowledged church leader, was denied the ability to place his actions in that context.

Having acknowledged the Unification Church as a religious organization, and Moon as its leader, First Amendment protection under either the Religion Clauses or freedom of speech and association could not then be denied.

The First Amendment right of freedom of association establishes that an

organization cannot be "outlawed" or rendered illegal, whether on a conspiracy theory or otherwise, in absence of a clear showing that the group is actively engaged in illegal conduct. See, Yates v. United States, 354 U.S. 298 (1957). Criminal prosecution of an individual associated with a protected organization can be based on violation of a valid law, but the state cannot seize upon protected acts as the basis for a criminal charge. See, N.A.A.C.P. v. Claiborne, supra.; De Jonge v. Oregon, 299 U.S. 353 (1937).

This prosecution rests on denying the Moon organization the First Amendment protections and legal precedents accorded other, albeit more established, respectable, and less despised religious organizations. The historical lawful unincorporated structure of religious societies, social groups, and political

organizations was used as proof of organizational non-existence. A trust was denied where the assets were held and expended in a manner comparable to that used by religious and other organizations. Lawful, constitutionally protected conduct was transformed into criminal activity by denying Moon the ability to give religious reasons for his actions and abrogating the integrity of the internal decision making process of an organization engaged in First Amendment activity.

Where the government is condoned for a criminal prosecution based on a method which treats one religious organization differently from another, First Amendment freedom for any organization is at risk. Unpopular, minority political organizations are endangered by the method of this prosecution. After almost

thirteen years of persecution of the Communist Party, U.S.A. on questions of taxable income the Court of Appeals for the D.C. Circuit remanded the matter to the Tax Court for findings of fact consistent with the principle that the Communist Party could not be treated differently from other political parties. Communist Party v. Commissioner, 373 F.2d 682 (D.C.Cir. 1967). This Court has recognized that membership or support of unpopular, minority political organizations has resulted in government harassment and persecution requiring strict protection of associational rights. Brown v. Socialist Workers '74 Campaign Committee, __U.S.__, 103 S.Ct. 416 (1982); Buckley v. Valeo, 424 U.S. 1 (1976). The political organizations in those cases were unincorporated entities, and this Court recognized not only the need to

protect contributors of "disfavored minority parties", but also the necessary expenditures made by these organizations, including those for commercial transactions. Brown v. Socialist Workers, supra. at 423.

The injury which could be inflicted on political and other associations, particularly unpopular, minority political groups by sanctioning the method of the Moon prosecution is not a matter of speculation. It could have powerful negative ramifications on the integrity of an organization regarding its structure, administration and financial operations. This prosecution provides the framework for harassment and victimization for targeted religious, social and political organizations and serves to criminalize heretofore established and lawful practices.

CONCLUSION

For the above-stated reasons, amicus urges that a writ of certiorari be granted and this Court decide the important and urgent questions presented by this case.

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